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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150105013-5013-01]

RIN 0648-BE62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Recreational Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would revise the daily bag limit for red grouper in the Gulf of Mexico (Gulf) and remove the recreational post-season bag-limit reduction accountability measure (AM) for Gulf red grouper. Additionally, this rule would correct an error in the Gulf individual fishing quota (IFQ) multi-use provisions for the Grouper/Tilefish IFQ program. The purpose of this rule is to modify the Gulf red grouper recreational management measures to improve recreational fishing opportunities by

achieving optimal yield for the red grouper resource.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2014-0153" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0153](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0153), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Richard Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will

be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web Site at

[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html).

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

In April 2014, NMFS announced that the Gulf red grouper recreational annual catch limit (ACL) was exceeded in 2013. In accordance with recreational AMs adopted in Amendment 32 to the FMP (77 FR 6988, February 10, 2012), this triggered a reduction in the bag limit in 2014 from four fish to three fish, and a recreational closure was implemented on October 4, 2014, to ensure that landings did not exceed the recreational annual catch target (ACT). In response

to the in-season recreational closure, the Council, at its June 2014 meeting, directed staff to begin development of a framework action to potentially reduce the recreational bag limit, and adjust the recreational AMs in an effort to extend the red grouper recreational fishing season.

Prior to implementation of Amendment 32 to the FMP, the red grouper recreational allocation had not been met in recent years. The red grouper recreational allocation of the total allowable catch (TAC) was initially set at 1.25 million lb (0.567 million kg), gutted weight, in 2004, was increased to 1.82 million lb (0.826 million kg), gutted weight, in 2009, and was then reduced to 1.36 million lb (0.617 million kg), gutted weight, in 2011. In 2012, Amendment 32 to the FMP replaced the red grouper TAC with an ACL and ACT, and management measures intended to allow harvest to achieve the ACT. The red grouper recreational ACL and ACT were set for 2012 and beyond at 1.9 million lb (0.862 million kg), gutted weight, and 1.73 million lb (0.785 million kg), gutted weight, respectively. Also in 2012, the red grouper bag limit was increased from two fish to four fish per person, under the four-fish aggregate grouper bag limit, to allow the recreational sector to fully harvest its allocation and achieve optimum yield. The post-season AM that was implemented in 2012, was a reduction in the bag limit by one fish, if at the end of any season, NMFS determined that the recreational sector has exceeded its red

grouper ACL. Therefore, the bag limit would be reduced to three fish in the following season, and could be reduced to two fish the season after that, if the ACL was again exceeded. The bag limit would not be reduced below two fish.

#### Management Measures Contained in this Proposed Rule

This rule would reduce the Gulf red grouper recreational bag limit from four fish to two fish within the four-fish aggregate grouper bag limit, and remove the post-season AM that reduces the daily bag limit the next fishing season when the previous fishing year's ACL is exceeded. The other post-season AMs currently codified in the regulations would remain in effect without change. The first post-season AM currently codified in the regulations applies regardless of whether red grouper are overfished and requires that NMFS will publish a notification to reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT. The second post-season AM currently codified in the regulations applies if red grouper are overfished, and requires NMFS to reduce the recreational ACL and recreational ACT the following fishing year by the prior fishing year's recreational ACL overage.

#### Additional Proposed Changes to Codified Text

Amendment 32 to the FMP established a formula-based method for

setting gag and red grouper multi-use allocations for the Gulf Grouper/Tilefish IFQ program to allow for flexibility in harvesting practices and address potential bycatch associated with co-occurring species (77 FR 6988, February 2, 2012). At the beginning of each fishing year, a percentage of the gag and red grouper allocation is designated as multi-use allocation valid for harvesting either gag or red grouper. However, gag multi-use allocation is not available if red grouper is under a rebuilding plan and red grouper multi-use allocation is not available if gag is under a rebuilding plan. For example, gag multi-use allocation would be set to zero percent if red grouper is under a rebuilding plan.

The final rule for Amendment 32 erroneously stated that if red grouper is under a rebuilding plan, then red grouper multi-use allocation should be set to zero. NMFS corrects this mistake and changes "red grouper multi-use allocation" to "gag multi-use allocation" in this instance.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for

purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The objective of this proposed rule is to change the red grouper recreational management measures in the Gulf to improve recreational fishing opportunities by extending the number of days in the fishing season. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would not be expected to directly affect any small entities. This proposed rule would change the red grouper recreational bag limit in the Gulf. Only recreational anglers, who may fish from private, rental, charter vessels, or headboats, are allowed a bag or possession limit of red grouper in the Gulf. Captains or crew members on charter vessels or headboats, cannot harvest or possess red grouper under the recreational bag limit. Because only recreational anglers are allowed a bag or possession limit, only recreational anglers would be directly affected by the proposed changes to the red grouper recreational bag limit. Recreational anglers, however, are not small entities under the Regulatory Flexibility Act (RFA) and the economic effects of this

proposed rule on these anglers are outside the scope of the RFA.

Charter vessels and headboats (for-hire vessels) sell fishing services to recreational anglers. These vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision to purchase these services. Bag limit restrictions only define what can be kept and do not explicitly prevent the continued offer of for-hire fishing services. In response to a reduced bag limit, including a zero-fish limit, catch and release fishing for a target species could continue, as could fishing for other species. Because the proposed change in the red grouper bag limit would not directly alter the service sold by these vessels, this proposed rule would not directly apply to or regulate their operations. For-hire vessels would continue to be able to offer their core service, which is an attempt to "put anglers on fish," provide the opportunity for anglers to catch whatever their skills enable them to catch, and keep those fish that they desire to keep and are legal to keep. Any change in demand for these fishing services, and associated economic affects, as a result of changing the bag limit would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be



indirect, they fall outside the scope of the RFA.

In addition, no small entities would be expected to be directly affected by the proposed corrections of the multi-use allocation regulatory text because the conditions that may have allowed inappropriate use of the allocation due to the error in the implementation of Amendment 32 to the FMP have not occurred since the implementation.

This proposed rule would not require any new reporting, record-keeping, or other compliance requirements associated with reporting or record-keeping that may require professional skills.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: January 20, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.22, the last sentence in paragraph (a)(5)(ii)(B) is revised to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) \* \* \* However, if red grouper is under a rebuilding plan, the percentage of gag multi-use allocation is equal to zero.

\* \* \* \* \*

3. In § 622.38, the first sentence in paragraph (b)(2) is revised to read as follows:

§ 622.38 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(2) Groupers, combined, excluding goliath grouper--4 per person

per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day. \* \* \*

\* \* \* \* \*

4. In § 622.41, the second sentence in paragraph (e)(2)(ii) is revised and the third sentence in paragraph (e)(2)(ii) is removed to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \* In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. \* \* \*

\* \* \* \* \*

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